

EXHIBIT 1

Theodore H. Dwyer, Jr.

1 are you referring to the penthouse work, the
2 carved out piece?

3 A. Yes, so ductwork and penthouses had
4 not been completed, there were some controls
5 that had not been installed and that's what
6 we asked Zimmer to come in and do on an
7 emergency basis because if some inspector had
8 come in there and seen that and knew what he
9 was looking at he could have shut us down.

10 Q. I'm going to show you next an
11 exhibit that has two markings. And just so
12 the record is clear and so you understand,
13 counsel have heard this a couple of times
14 before, we originally marked an exhibit at
15 Mr. Weer's deposition as Weer-11, Payment
16 Application 24 and realized that the first
17 page of the one that was marked didn't have
18 both of the certificate signatures, so we
19 added another copy of that page that did and
20 made that Weer-11A.

21 So with that introduction,
22 would you take a look at Weer-11 and 11A.

23 A. Okay.

24 Q. Have you seen that before today?

Theodore H. Dwyer, Jr.

1 A. Yes.

2 Q. And this is the 24th payment
3 application for Mr. McDaniel for the period
4 up to August 31st, 2004, correct?

5 A. Yes.

6 Q. And Mr. McCone signed it on
7 September 13th and the Becker Morgan
8 representative on the 15th of September; am I
9 correct?

10 A. Yes.

11 Q. I'd like you to take a look at the
12 last page of the exhibit, okay?

13 A. Yes.

14 Q. Do you see the Column G, total
15 completed and stored to date?

16 A. Yes.

17 Q. And then to the right of that as
18 part of Column G is percentage.

19 A. Yes.

20 Q. Do you see that?

21 A. Yes.

22 Q. At the bottom of that column it says
23 as a grand total that 98.05% of the project,
24 the scope of McDaniel I should say, is

Theodore H. Dwyer, Jr.

1 completed and/or stored.

2 Do you see that?

3 A. Yes.

4 Q. On September 13th, 2004, was
5 McDaniel's scope of work 98% complete and in
6 conformance with the contract documents?

7 MR. LOGAN: Object to the
8 form.

9 A. Well, we know now that it wasn't.
10 BY MR. SHIELDS:

11 Q. Did you know then that it wasn't?

12 A. Well, you've fast-forwarded from one
13 point to this point and I want to fill in the
14 blanks, so I'm not going to answer the
15 question directly.

16 But I look at the balance here
17 and the balance shows over \$300,000, 213 in
18 retainage and \$85,000 in work left to
19 complete.

20 Q. Okay.

21 A. Frankly, in our estimation, that was
22 probably enough to cover the remaining work
23 at that time. That's what we thought at the
24 time. Subsequently it's been proven that

Theodore H. Dwyer, Jr.

1 that's not the case. But what this, without
2 looking at the cover sheet or the cover
3 letter and without talking about what this
4 represents, this represents payment to some,
5 this and invoices, the two invoices that
6 preceded it represent payment to subs and
7 suppliers in order to get material on the
8 site that was, that had not been, would not
9 be delivered if they had not been paid by
10 joint checks.

11 McDaniel had been paid
12 previously for this work and he chose to use
13 the money for something else. Whatever it
14 was, I don't know. But there were people who
15 had not been paid. And in order to get this
16 done, we had to get them paid and we paid
17 them on joint checks. And he agreed to it.
18 He signed them. He had to because we
19 couldn't pay them directly, we had to go
20 through him.

21 So he agreed to all of it and
22 our assumption was that RLI knew what was
23 going on. Because every time we talked to
24 somebody about joint checks, they said joint

Theodore H. Dwyer, Jr.

1 checks are fine with us, we have no problem
2 with joint checks.

3 Q. And a joint check, in general, is a
4 check that instead of being made out simply
5 to the contractor is made out to the
6 contractor and some subcontractor or supplier
7 of his that is owed a defined sum of money;
8 is that correct?

9 A. That's correct.

10 Q. And would you agree with me that
11 inherent in the concept of joint checks is
12 that that subcontractor or supplier has, in
13 fact, provided the service or the material
14 that's called for?

15 MR. LOGAN: Objection.

16 A. I think -- objection meaning?

17 MR. LOGAN: It calls for
18 speculation.

19 MR. SHIELDS: Well, I want to
20 know what his understanding of the
21 circumstances under which a joint check is
22 appropriate.

23 MR. LOGAN: Which job? This
24 job or philosophically?

EXHIBIT 2

Brad A. Hastings

1 deposition together.

2 The first page I'm going to
3 show you is marked Weer-11A; the second,
4 third and four pages are marked Weer-11,
5 McDaniel pay application No. 24. The reason
6 we added the page 11A is that the page, the
7 first page of 11, which are the same document
8 except for the absence of a signature, so we
9 added this for completeness sake.

10 Other than the signature status
11 I'll represent to you that 11A and the first
12 page of 11 are, were provided to us as the
13 same document.

14 So please take a look at those.

15 A. Okay.

16 Q. You've seen that before?

17 A. Yes.

18 Q. This is Mr. McDaniel's 24th payment
19 application, correct?

20 A. Yes.

21 Q. Now, it contains, does it not, a
22 certification section for the signatures of a
23 representative of the construction manager
24 and of the architect?

KARYN M. GEFTMAN & ASSOCIATES

Brad A. Hastings

1 A. That is correct.

2 Q. And does it bear your signature,
3 sir?

4 A. Yes, it does.

5 Q. Now, if you would, please, would you
6 read aloud for the record the paragraph that
7 appears below the phrase certificate for
8 payment in the lower right-hand corner. I
9 hope your copy is sufficiently legible.

10 A. "In accordance with the contract
11 documents, based on on-site observations and
12 data comprising this application, the
13 construction manager and architect certify to
14 the owner that to the best of their
15 knowledge, information and belief the work
16 has progressed as indicated and the quality
17 of the work is in accordance with the
18 contract documents and the contractor is
19 entitled to payment of the amount certified."

20 Q. Okay. Thank you.

21 And you signed below that
22 certification on, I believe, September 15th
23 approving that payment application submitted
24 for the period through August 31st of 2004,

Brad A. Hastings

1 correct?

2 A. That is correct.

3 Q. And did you review this payment
4 application before you signed it?

5 A. Yes.

6 Q. It came to you having already been
7 executed by Mr. McDaniel and also Mr. McCone;
8 is that correct?

9 A. That is correct.

10 Q. Did you review the schedule, the
11 continuation sheets, attached pages two and
12 three, as part of your review of the
13 document?

14 A. Yes.

15 Q. Did you make the on-site
16 observations that are referred to in the
17 paragraph you just read for me?

18 A. They would have been the ongoing
19 observations that we've discussed, yes.

20 Q. Okay. But, I mean, up to the point,
21 the period submitted for is up through August
22 31st, correct?

23 A. Correct.

24 Q. And you executed the document

Brad A. Hastings

1 approximately two weeks later.

2 Had you made an on-site
3 inspection or an on-site observation, rather,
4 observation, between August 31st and
5 September 15th, 2004?

6 A. I would assume we had been on-site
7 somewhere between late August and that time
8 frame before we signed it, yes.

9 Q. And did you examine Mr. McDaniel's
10 work for conformance with the requirements of
11 the contract documents?

12 A. We have been reviewing it on site as
13 part of our overall site observations, yes.

14 Q. Now, he had submitted, and if I
15 understand correctly, had had approved 23
16 prior applications in addition to, I think,
17 at least one supplemental application. I
18 know there's at least one out there that has
19 a number and then a letter designation after
20 it. But you had, do I understand correctly
21 that you had been making ongoing site
22 observations?

23 A. Correct.

24 Q. Let me make sure my question is

Brad A. Hastings

1 clear to you.

2 Each time a payment application
3 from McDaniel came in and it reached you
4 having made it through Mr. McCone's scrutiny,
5 did you or a representative of your company
6 make a new on-site inspection to assure
7 yourselves that as it says here the work had
8 been performed, the work had progressed as
9 indicated and the quality was in accordance
10 with the contract documents?

11 MR. COTTRELL: Objection as to
12 form.

13 MS. PETRONE: Objection.

14 MR. COTTRELL: You're using
15 inspections again.

16 MR. SHIELDS: I'm sorry,
17 observations.

18 MS. PETRONE: I still have an
19 objection.

20 BY MR. SHIELDS:

21 Q. You can answer the question --

22 A. Yes, sir.

23 Q. -- if you can.

24 A. I'm trying to be sure I understand.

KARYN M. GEFTMAN & ASSOCIATES

Brad A. Hastings

1 We would make on-site
2 observations on a regular basis. There was
3 not they get a payment application, they go
4 make a specific review for that application
5 and they typically would come with others.
6 It was based on the overall review of what
7 was going on.

8 Q. Okay. Did you understand your
9 signature on this document to represent a
10 certification that the amount of work
11 Mr. McDaniel was claiming he had done, you,
12 in fact, had verified he had done, correct?

13 A. I understood it with this
14 application there was a specific, there was a
15 cover letter that was associated with it and
16 there had been some discussion in order to
17 pay one of the suppliers that they had to get
18 money and I think there had been issues with
19 his payment to his suppliers and
20 subcontractors. So part of this, it was
21 understood, was being put in so that that
22 payment could be made.

23 Q. Are you referring to like a joint
24 check type of arrangement or --

Brad A. Hastings

1 A. There had been joint check
2 arrangements prior and I think in this
3 instance it was also the intention that there
4 would be a joint check for, as I recall, this
5 one there was a specific -- I'm sorry, I
6 don't recall who that was without seeing the
7 cover letter from EDiS that accompanied this,
8 but it specifically had broken that piece out
9 and I think with this one it also had stated
10 that, had requested that the Indian River
11 School District not release the other portion
12 to McDaniel pending some other actions on his
13 part.

14 Q. Okay. Would you turn to, I guess it
15 would be the third page of this exhibit, the
16 first continuation page.

17 A. Right.

18 Q. Are you with me there?

19 A. I'm with you.

20 Q. Okay. Let's take a look at the,
21 going across here, you're familiar with this
22 form obviously. It's a standard AIA contract
23 form or a payment form, correct?

24 A. Yes.

Brad A. Hastings

1 Q. You've seen and reviewed these any
2 number of times in the past?

3 A. That is correct.

4 Q. Column B lists a description of
5 work. These are the subparts of the scope of
6 McDaniel's contract, correct?

7 A. That is correct.

8 Q. Column C is the scheduled value, the
9 itemization, if you will, of the how much we
10 total up to get to his \$4.3 million contract
11 value.

12 A. That is correct.

13 Q. D is work previously completed.

14 Do you agree?

15 A. Correct.

16 Q. And then G has two subparts. It's
17 the total on the left column, basically money
18 paid and then the right column percentage of
19 the total that that represents, correct?

20 A. Correct.

21 Q. And then the Column I represents the
22 retainage which -- why don't you explain for
23 me what your understanding of retainage in
24 this context is.

Brad A. Hastings

1 A. Retainage is essentially a portion
2 or a percentage of the work that is held with
3 each application pending final completion of
4 the project at which time it's released to
5 the contractor.

6 Q. So punch list items or the like. So
7 even when you're, when you're submitting your
8 payment applications, even if you completed
9 something entirely, a percentage is still
10 held back until final completion. And that's
11 standard in contracts of this type; is that
12 not correct?

13 A. That's correct.

14 Q. Let me ask you and I don't want to
15 be overly laborious about this, but to some
16 degree I'm not going to be able to avoid it.

17 Going down this page, as of
18 August 31st, 2004, was the sanitary sewer
19 underground work 100% complete?

20 A. I would say yes.

21 Q. Was it completed in a manner
22 consistent with the contract requirements?

23 A. I believe so, yes.

24 Q. How about the sanitary sewer above-

Brad A. Hastings

1 ground, was that 100% complete?

2 A. I believe so, yes.

3 Q. The storm sewers underground?

4 A. I believe so, yes.

5 Q. Storm sewers above-ground?

6 A. There may have been a portion in
7 Area B that was not complete but I don't, I
8 can't recall specifically.

9 Q. So you think with respect to the
10 item storm sewer above-ground that the 100%
11 completion listed in Column G may not be
12 accurate?

13 A. It can't be far off because the Area
14 B was, was essentially closed in and roofed,
15 so I would say it was probably at 100%.

16 Q. The next item down, what is domestic
17 above-ground?

18 A. Domestic water.

19 Q. Domestic water, okay.

20 Was that 100% complete as of
21 August 31st, 2004?

22 A. Again, I'm trying to remember what
23 was in area, that portion of Area B. I don't
24 recall.

EXHIBIT 3

MAR. 20. 2007 9:31AM

NO. 057 P. 11

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702/CMA

CONSTRUCTION MANAGER-ADVISED EDITION

PAGE ONE OF THREE PAGES

TO OWNER:

Indian River School District
31 Hoosier Street
Salisbury, DEPROJECT:
Sussex Central High School

APPLICATION NO: 24

Distribution to:

☐ OWNER☐ CONSTRUCTION☐ MANAGER☐ ARCHITECT☐ CONTRACTOR

FROM CONTRACTOR:

McDaniel Plumbing & Heating
205 Old Churchmans Rd
New Castle, DE 19720VIA ARCHITECT:
CONTRACTOR FOR: B-14 Mechanical, Plumbing & ATCEDIS Company
Becker Morgan Group

PERIOD TO: 08/21/04

PROJECT NO: 40211-01

CONTRACT DATE: 09/28/02

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM
2. Net change by Change Orders
3. CONTRACT SUM TO DATE (Line 1 + 2)
4. TOTAL COMPLETED & STORED TO DATE
(Column G on G703)
5. RETAINAGE:
 - a. 5 % of Completed Work
(Column D + E on G703)
 - b. 5 % of Stored Material
(Column F on G703)

\$ 4,335,500.00
\$ 14,971.00
\$ 4,350,471.00
\$ 4,265,340.00

Total in Column I of G703
Total Retainage (Lines 5a + 5b or
(Line 5 less Line 6)

6. TOTAL EARNED LESS RETAINAGE
(Line 4 less Line 5 total)
7. LESS PREVIOUS CERTIFICATES FOR
PAYMENT (Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6)

\$ 213,277.00
\$ 4,032,263.00
\$ 3,945,863.00
\$ 106,400.00
\$ 298,208.00

CHANGE ORDER SUMMARY

1. Total changes approved in previous months by Owner	ADDITIONS	DEDUCTIONS
	\$12,588.00	\$1,000.00
Total approved this Month	\$3,383.00	
TOTALS	\$15,971.00	\$1,000.00
NET CHANGES by Change Order	\$14,971.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown hereon is now due.

CONTRACTOR:

McDaniel Plumbing & Heating

By: *[Signature]*Date: *[Signature]*

State of: Delaware

County of: New Castle

Subscribed and sworn to before me this 31st day of March, 2003
Notary Public: *[Signature]*
My Commission expires: March 17, 2005

CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Construction Manager and Architect certify to the Owner that to the best of their knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

\$ 106,400.00

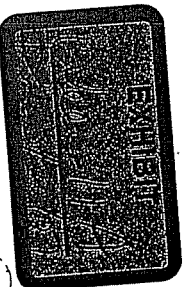
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that changed to conform to the amount certified.)

CONSTRUCTION MANAGER: *[Signature]* Date: 9/13/04
By: *[Signature]* Date: 9/13/04
ARCHITECT: *[Signature]* Date: 9/15/04

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G702/CMA - APPLICATION AND CERTIFICATE FOR PAYMENT - CONSTRUCTION MANAGER-ADVISED EDITION - 1992 EDITION - AIA® - 1992
THE AMERICAN INSTITUTE OF ARCHITECTS, 1146 NEW YORK AVE., N.W., WASHINGTON, DC 20005-4222

G702/CMA-1992



APPLICATION AND CERTIFICATE FOR PAYMENT

PROJECT:

Sussex Central High School

CONSTRUCTION MANAGER-ADVISER EDITION

PAGE ONE OF THREE PAGES

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OWNER:
Jian River School District
Hoosier Street
Jbyville, DE
CONTRACTOR:
Daniel Plumbing & Heating
5 Old Churchmans Rd
New Castle, DE 19720

VIA ARCHITECT:

EDIS Company
Hecker Morgan Group

APPLICATION NO: 24
PERIOD TO: 08/31/04
PROJECT NO: 40211-01
CONTRACT DATE: 09/28/02

Distribution to:
☐ OWNER
☐ CONSTRUCTION
MANAGER
☐ ARCHITECT
☐ CONTRACTOR

CONTRACT FOR: 15-14 Mechanical, Plumbing & ATC

NOTIFICATION IS MADE FOR PAYMENT, AS SHOWN BELOW, IN CONNECTION WITH THE CONTRACT.

ORIGINAL CONTRACT SUM
Net change by Change Orders
CONTRACT SUM TO DATE (Line 1 + 2)
TOTAL COMPLETED & STORED TO DATE
(Column G on C703)

\$ 4,335,500.00
\$ 14,971.00
\$ 4,350,471.00
\$ 4,265,500.00
\$ 213,277.00

RETAINAGE:
a. 5 % of Completed Work
(Column I on C703)
b. 5 % of Stored Material
(Column F on C703)
Total Retainage (Lines 5a + 5b or
Total in Column I of C703)

TOTAL EARNED LESS RETAINAGE
(Line 4 less Line 5 Total)
LESS PREVIOUS CERTIFICATES FOR
PAYMENT (Line 6 from prior Certificates)
CURRENT PAYMENT DUE
BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6)

\$ 213,277.00
\$ 4,052,263.00
\$ 3,945,863.00
\$ 106,400.00
\$ 298,208.00

CHANGE ORDER SUMMARY

CHANGES ORDERED	ADDITIONS	DEDUCTIONS
Total amount approved in previous months by Owner	\$12,588.00	\$1,000.00
Total approved this Month	\$3,283.00	
TOTALS	\$15,871.00	\$1,000.00
NET CHANGES by Change Order	\$14,871.00	

A DOCUMENT PREPARED BY APPLICATION AND CERTIFICATION FOR PAYMENT, CONSTRUCTION MANAGER-ADVISER EDITION, 1982 EDITION, MAY 9, 1982
IN AMERICAN INSTITUTE OF ARCHITECTS, 1745 NEW YORK AVE., N.W., WASHINGTON, DC 20004-1212

The undersigned Contractor certifies that to the best of the Contractor's knowledge,
information and belief the Work covered by this Application for Payment has been
completed in accordance with the Contract Documents, that all amounts have been paid
by the Contractor for Work for which previous Certificate for Payment were issued and
payments received from the Owner, and that current payment shown hereon now due

CONTRACTOR: Daniel Plumbing & Heating
By: *[Signature]* Date: *[Date]*
State of: Delaware County of: New Castle
Subscribed and sworn to before me this 31st day of New Castle
Notary Public: *[Signature]* August 14, 2004
My Commission Expires: March 17, 2005

CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data
comprising this application, the Construction Manager and Architect certify to the
Owner that to the best of their knowledge, information and belief the Work has
progressed as indicated, the quality of the Work is in accordance with the Contract
Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

Attach explanation if amount certified differs from the amount applied for. Initial all
figures on this application and on the Continuation Sheet that changed to conform to the
amount certified.

By: *[Signature]* Date: 9/13/04
CONSTRUCTION MANAGER
By: *[Signature]* Date: 9/13/04
ARCHITECT

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the
Contractor named herein. Issuance, payment and acceptance of payment are without
prejudice to any rights of the Owner or Contractor under this Contract.

GT0304-1982



CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

APPLICATION NO: 24

APPLICATION DATE: 08/31/04

PERIOD TO: 08/31/04

ARCHITECTS PROJECT NO:

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainerage for line items may apply.

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H %	I BALANCE TO FINISH (C-H)	J RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
	Mobilization	\$60,000.00	\$60,000.00			\$60,000.00	100.00%		\$3,000.00
	Bond	\$55,000.00	\$55,000.00			\$55,000.00	100.00%		\$2,750.00
	Sanitary U/G	\$140,000.00	\$140,000.00			\$140,000.00	100.00%		\$7,000.00
	Sanitary A/G	\$210,000.00	\$210,000.00			\$210,000.00	100.00%		\$10,500.00
	Storm U/G	\$95,000.00	\$95,000.00			\$95,000.00	100.00%		\$4,750.00
	Storm A/G	\$83,000.00	\$83,000.00			\$83,000.00	100.00%		\$4,150.00
	Domestic A/G	\$180,000.00	\$180,000.00			\$180,000.00	100.00%		\$9,000.00
	Gas Piping	\$36,000.00	\$36,000.00			\$36,000.00	100.00%		\$1,800.00
	Fuel Oil Piping	\$8,000.00	\$8,000.00			\$8,000.00	100.00%		\$400.00
	Chilled Water Piping	\$400,000.00	\$395,000.00	\$5,000.00		\$400,000.00	100.00%		\$20,000.00
	Fixtures	\$290,000.00	\$280,000.00	\$10,000.00		\$290,000.00	100.00%		\$14,500.00
	IVAC Equipment	\$660,000.00	\$660,000.00			\$660,000.00	100.00%		\$33,000.00
	GIRDS	\$23,000.00	\$20,000.00	\$3,000.00		\$23,000.00	100.00%		\$1,150.00
	Water Storage Tank	\$80,000.00	\$75,000.00	\$5,000.00		\$80,000.00	100.00%		\$4,000.00
	Pipe Dampers	\$10,000.00	\$10,000.00			\$10,000.00	100.00%		\$500.00
	Lowvoltage	\$15,000.00	\$15,000.00			\$15,000.00	100.00%		\$750.00
	Exhaust Fan	\$12,000.00	\$9,000.00	\$3,000.00		\$12,000.00	100.00%		\$600.00
	Dust Collectors	\$18,500.00	\$18,500.00			\$18,500.00	100.00%		\$925.00
	Engine & Welding Duct	\$30,000.00	\$30,000.00			\$30,000.00	100.00%		\$1,500.00
	Water Heaters	\$12,000.00	\$12,000.00			\$12,000.00	100.00%		\$600.00
	Boiler Breaching	\$95,000.00	\$95,000.00			\$95,000.00	100.00%		\$4,750.00
	Boilers	\$5,000.00	\$5,000.00			\$5,000.00	100.00%		\$250.00
	Fuel Oil Pumps	\$26,000.00	\$26,000.00			\$26,000.00	100.00%		\$1,300.00
	Fuel Oil Tank	\$54,000.00	\$54,000.00			\$54,000.00	100.00%		\$2,700.00
	Pumps - Heating/Cooling	\$55,000.00	\$55,000.00			\$55,000.00	100.00%		\$2,750.00
	Pumps - Wells	\$12,000.00	\$6,000.00	\$6,000.00		\$12,000.00	100.00%		\$600.00
	Air Compressor & Filters	\$3,500.00	\$3,500.00			\$3,500.00	100.00%		\$175.00
	Grease Trap	\$17,500.00	\$17,500.00			\$17,500.00	100.00%		\$875.00
	Clypeol	\$22,000.00	\$22,000.00			\$22,000.00	100.00%		\$1,100.00
	Gas Accessories	\$15,000.00	\$15,000.00			\$15,000.00	100.00%		\$750.00
	Booster Pump								

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THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20004-6332

G703-1992

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 3 PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

contractor's signed certification is attached.

Laborations below, amounts are stated to the nearest dollar.

See Column I on Contracts where variable reinsurance for line items may apply.

ARCHITECTS PROJECT NO:

APPLICATION NO:

24

APPLICATION DATE:

08/31/04

PERIOD TO:

08/31/04

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)		H % (G + E)	I BALANCE TO FINISH (C - G)	J RETAINAGE (IF VARIABLE RATE)
	Balance Valve	\$8,000.00	\$8,000.00			\$8,000.00	100.00%			\$400.00
	Kitchen	\$10,000.00	\$10,000.00			\$10,000.00	100.00%		\$3,731.00	\$500.00
	Allowance	\$10,000.00	\$6,269.00			\$6,269.00	62.69%		\$3,731.00	\$313.45
	Main floor (840) Allowance	\$14,500.00	\$4,000.00			\$4,000.00	27.59%		\$10,500.00	\$200.00
	Ductwork	\$440,000.00	\$426,400.00			\$426,400.00	100.00%			\$22,000.00
	Welded Duct	\$7,000.00	\$7,000.00			\$7,000.00	100.00%			\$350.00
	Insulation	\$265,000.00	\$254,200.00			\$254,200.00	100.00%			\$13,250.00
	Water Treatment	\$216,100.00	\$216,100.00			\$216,100.00	100.00%			\$10,805.00
	Spiral Duct	\$39,000.00	\$39,000.00			\$39,000.00	100.00%			\$1,950.00
	Pump House	\$17,000.00	\$17,000.00			\$17,000.00	100.00%			\$850.00
	ATC	\$320,000.00	\$303,000.00			\$303,000.00	94.69%		\$17,000.00	\$15,150.00
	A/C Gas & Fuel Oil	\$5,000.00	\$5,000.00			\$5,000.00	100.00%			\$250.00
	Concrete Slabs	\$9,000.00	\$9,000.00			\$9,000.00	100.00%			\$450.00
	Testing, Adjusting & Balancing	\$69,000.00	\$17,600.00			\$17,600.00	25.51%		\$51,400.00	\$880.00
	Excavation	\$16,500.00	\$16,500.00			\$16,500.00	100.00%		\$3,100.00	\$825.00
	O&M Materials	\$1,200.00	\$2,100.00			\$2,100.00	50.00%		\$1,200.00	\$0.00
	As-Built Drawings	\$4,200.00	\$2,100.00			\$2,100.00	50.00%		\$2,100.00	\$1,050.00
	Alternate #1 - Auxiliary Gym	\$33,000.00	\$33,000.00			\$33,000.00	100.00%			\$225.00
	Alternate #2 - Storage Area	\$4,500.00	\$4,500.00			\$4,500.00	100.00%			\$450.00
	Alternate #3 - Classrooms	\$9,000.00	\$9,000.00			\$9,000.00	100.00%			\$115.00
	CO#1 Furne Flood Services	\$2,300.00	\$2,300.00			\$2,300.00	100.00%			\$38.55
	CO#2 Add Insulation Rm F138	\$771.00	\$771.00			\$771.00	100.00%			\$0.00
	CO#3 Delete (4) L-11 fixtures	(\$1,000.00)	\$9,517.00			\$9,517.00	100.00%		(\$1,000.00)	\$475.85
	CO#4 Wellness Center	\$9,517.00	\$9,517.00			\$9,517.00	100.00%			\$169.15
	CO#5 Overflow nozzles	\$3,383.00	\$3,383.00			\$3,383.00	100.00%			\$0.00
										\$0.00
	GRAND TOTALS	\$4,350,471.00	\$4,153,540.00			\$4,153,540.00	98.05%		\$84,931.00	\$213,277.00

AIA DOCUMENT G703 - CONTINUATION SHEET FOR G702 - 1992 EDITION - AIA® © 1992
 THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-4922

G703-1992

EXHIBIT 4

Harry R. Blackburn
& Associates, P.C. Attorneys at Law

August 17, 2004

Harry R. Blackburn*+

Of Counsel
Federico Calaf-LeGrand-

*Also Admitted in NJ

+Also Admitted in CT

-Admitted Only in PR

Direct Dial
Ext. 102

Via Facsimile and First Class Mail

Donald Logan, Esquire
Tighe, Cottrell & Logan, P.A.
First Federal Plaza, Suite 500
Wilmington, DE 19801

Re: Principal: McDaniel Plumbing & Heating
Projects: Caesar Rodney & Sussex High School
File Nos: 151193 and 163615
Our File No.: 729.004

Dear Mr. Logan:

Pursuant to our conversation yesterday, please allow this letter to confirm that my client, RLI Surety, will set up a trust fund/escrow account for your two (2) clients, Caesar Rodney and Sussex High School subject to your receipt of an assignment of funds from McDaniel Plumbing. It is my understanding that your clients each prefer to send one payment to the trust fund rather than to continue to issue joint checks and/or split the payments up for labor and materials. A condition that you requested was that the Surety agree to indemnify the School District for any funds that are misapplied, etc. While we believe the chances of that happening are very slim, the Surety will agree to indemnify the School District and comply with your request. If you have a draft of an indemnity agreement that you prefer to use, please email it to me (at hblackburn@hrblackburn.com) and I will review same and, if acceptable, have it properly executed.

Additionally, as we discussed, since there was no formal declaration of default by your clients, it is our intention to have McDaniel Plumbing issue an assignment for the funds from itself over to the RLI trust. In that way, the Surety and McDaniel Plumbing working together will be best able to complete the projects in the most efficient and economical way possible.

Finally, it is my understanding that you are faxing to me a list of the joint checks that have been issued which were being sent out so that the Surety would know where such checks are going. Please be advised that notwithstanding my client's previous directive to hold distribution of any funds, we agree



1528 Walnut Street, 9th Floor, Philadelphia, Pennsylvania 19102 85-0124
208 Kings Highway South, Cherry Hill, New Jersey 08034 (856) 795-5758 Fax: (856) 428-1255
361 San Francisco Street, 4th Floor, San Juan, Puerto Rico 00901 (787) 725-1004
304 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 674-0700 Fax: (321) 674-2112
e-mail: attorneys@hrblackburn.com

RLI 00336

Harry R. Blackburn
& Associates, P.C.

Donald Logan, Esquire
August 17, 2004
Page 2

with the issuance of the joint checks at this point and authorize their release. Moreover, once we set the trust account up, any and all funds released to the trust account will be expeditiously processed.

Thank you for your cooperation and courtesy in this matter.

Very truly yours,


HARRY R. BLACKBURN

HRB/erl

cc: **Via Facsimile and First Class Mail:**
David S. Berry, Esquire
Edward Seglias, Esquire

Q:\RLI Surety\729\Logan 08.17-04.wpd

RLI 00337

DEPOSITION OF DAVID S. BERRY, 3/8/07

1 (Exhibit 29 was marked for
2 identification.)

3 BY MR. AMADIO:

4 Q. Exhibit 29 is an August
5 17th, 2004 letter from your counsel
6 to Donald Logan.

7 Have you seen this letter
8 before?

9 A. Yes.

10 Q. This letter applies to two
11 different projects, right, the Caesar
12 Rodney and the Sussex High School
13 project?

14 A. Correct.

15 Q. And what this letter
16 indicates is that on both projects
17 RLI was going to set up a trust
18 fund/escrow account, correct?

19 A. Yes.

20 Q. And the idea was that the
21 contract payments were going to be
22 put into the trust fund escrow
23 account and then monitored and used
24 by or directed by the surety to the



James DeCrescenzo Reporting, LLC

215.564.3905

Innovating Litigation
1880 JFK Blvd., 6th Floor, Philadelphia, PA 19103
www.JDReporting.com

FAX 215.751.0581

DEPOSITION OF DAVID S. BERRY, 3/8/07

1 payment of the costs of completing
2 the work upon these projects,
3 correct?

4 A. Correct.

5 Q. In the third paragraph on
6 the first page, in the second
7 sentence, your counsel says, quote,
8 Please be advised that
9 notwithstanding my client's previous
10 directive to hold distribution of any
11 funds, we agree with the issuance of
12 the joint checks at this point and
13 authorize their release.

14 Do you see that?

15 A. Yes.

16 Q. Was your counsel authorized
17 to make that statement on behalf of
18 RLI?

19 A. Yes.

20 MR. AMADIO: Let me show
21 you the next exhibit, Exhibit 30.

22 (Exhibit 30 was marked for
23 identification.)

24 BY MR. AMADIO:



James DeCrescenzo Reporting, LLC

215.564.3905

Innovating Litigation
1880 JFK Blvd., 6th Floor, Philadelphia, PA 19103
www.JDReporting.com

FAX 215.751.0581

EXHIBIT 5



Cashin Spinelli & Ferretti, LLC
Surety and Engineering Consultants

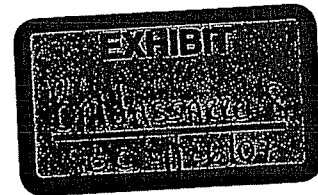
Bohemia, New York • Southington, Connecticut • Blue Bell, Pennsylvania • Lincolnshire, Illinois • Wichita, Kansas

September 9, 2004

VIA FACSIMILE 302-421-5715

Mr. Chris McCone

EdiS Company
110 South Poplar Street
Suite 400
Wilmington DE, 19805-0697



Re: Surety: RLI Insurance Company ("RLI")
Principal: McDaniel Plumbing And Heating Inc, ("McDaniel")
Obligee: Indian River School District ("IRSD")
Bond No.: SSB 365837
Project: Sussex Central High School
CSF No.: 19:419

Dear Mr. McCone,

We want to follow up our meeting on August 31, 2004 and provide you with the routing information for the special project account for the Sussex Central High School Project.

As discussed during the meeting, on behalf of the Surety, Cashin Spinelli & Ferretti has opened a trust account to receive and disburse the project funds.

The account information is:

Bank: Wachovia Bank, NA
Branch: Chalfont Financial Center
Acct Manager: Kathleen White, Assistant Vice President
Phone No: 215-997-5634

Account Name: Cashin Spinelli & Ferretti, LLC
Sussex Central High School Special Account
F/B/O RLI Insurance
Account No: 2000012959273

Routing Number: 031201467

We understand that there is a payment pending and that a portion will be paid as a joint check to Baltimore Air Coil, and the remainder will be sent to the project account. Please confirm the amounts and the dates of the transactions.

Nothing herein shall be deemed to be an estoppel, waiver or modification of any of Surety's rights or defenses or an admission as to the enforceability of the bond in question and Surety hereby reserves all of its rights and defenses under any contracts, agreements, bonds, or applicable law.

Sincerely,
Cashin Spinelli & Ferretti, LLC

By: Louis M. Baldassarre
Louis M. Baldassarre, Senior Project Manager

CSF 00365

CC: Dave Berry, Esq.

Louis M. Baldassarre

Page 150	Page 152
<p>1 arranging or attempting to arrange a meeting 2 after the letter was sent? 3 A. No, I was not involved with 4 arranging or attempting to arrange. 5 Q. Did you attend a meeting after 6 September 8th, 2004? 7 A. My recollection is, I did 8 attend a meeting. 9 Q. Do you remember when you 10 attended a meeting? 11 A. It was sometime in September. 12 MS. PETRONE: This will be 9. 13 - - - 14 (Exhibit Baldassarre-9 was 15 marked for identification.) 16 - - - 17 MS. PETRONE: I skipped over 18 8. 19 BY MS. PETRONE: 20 Q. Please identify Baldassarre-8. 21 A. It is a September 9th letter 22 drafted by myself to Chris McCone informing 23 him that the surety has directed Cashin 24 Spinelli & Ferretti to open a trust account</p>	<p>1 Baldassarre-9. 2 A. Okay. 3 Q. Please identify this document. 4 A. It's a September 16th, 2004 5 letter from Chris McCone to McDaniel 6 Plumbing & Heating referencing a seven-day 7 notification on area B. 8 Q. Have you seen this letter 9 before today? 10 A. My recollection is that I 11 have. 12 Q. Did you receive it on or about 13 September 16th, 2004? 14 A. Yes. 15 Q. There's a very faint stamp on 16 the top of it. It says September 20th, 17 2004. Do you see that? 18 A. Yes. 19 Q. Was that stamp affixed by your 20 company? 21 A. It's very possible that it 22 was. It appears to be our stamp. 23 Q. If you see the third 24 paragraph, it states: In accordance with</p>
Page 151	Page 153
<p>1 for the project funds. 2 Q. And if you look down to the 3 fourth paragraph starting with, "we 4 understand." 5 A. Yes. 6 Q. Would you read that paragraph? 7 A. We understand that there is a 8 payment pending and that a portion will be 9 paid as a joint check to Baltimore Air Coil, 10 and the remainder will be sent to the 11 project account. Please confirm the amounts 12 and the dates of the transactions. 13 Q. What did you mean when you 14 wrote that first sentence? What were you 15 talking about? 16 A. I'm talking -- my recollection 17 is, I was talking about this joint check, 18 the subject of Baldassarre-6. 19 Q. And you said earlier that you 20 thought that the remainder of that payment 21 application was not actually paid? 22 A. That's my recollection. I 23 don't recall that it ever was paid. 24 Q. All right. Let's now go to</p>	<p>1 article 2.4.1 of reference A and paragraph 2 2.4 of reference B, you are hereby given 3 notice that you must complete the following 4 items of work in area B by close of business 5 on Friday, 9/24/2004. 6 Is that a fair reading? 7 A. That's what it says. 8 Q. Did you discuss with McDaniel 9 his progress in area B after receiving this 10 letter? 11 A. I have no specific 12 recollection, but more than likely, yes. 13 Q. Do you remember McDaniel's 14 response? 15 A. I do not. 16 Q. Did you discuss this letter 17 with RLI? 18 A. I do not recall doing that, 19 no. 20 Q. Did McDaniel explain to you or 21 tell you how he planned to complete the work 22 noted in this letter by the deadline noted 23 in this letter? 24 A. I don't recall any specific</p>

39 (Pages 150 to 153)

ESQUIRE DEPOSITION SERVICES

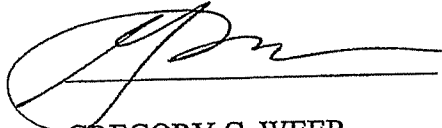
EXHIBIT 6

CERTIFICATE OF DEPONENT

I hereby certify that I have read the foregoing transcript of my deposition testimony, and that my answers to the questions propounded, with the attached Errata Sheet setting forth corrections or changes, are true and correct.

20 APRIL 2007

DATE


GREGORY C. WEER

ERRATA SHEET

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>	<u>REASON</u>
14	9-10	the "letter of intent" was a letter under the bond stating that IRSD was considering declaring a default, not declaring a default at that time.	I re-read the letter
47	19	it's not Vander Wendt; it's VandeMark	checked records
59	19	"corrected factor" should be "corrective action"	typo in transcription
70	5-6	The first one was between June and July	
86	6-7	I don't know whether EDIS contacted RLI prior to 6/4/04 but they had copied RLI on letters prior to 6/4/04	clarification
95	8-9	It was in September, 2004	I corrected this later in the deposition after I was shown Weer-26
97	8	Zimmer started work in September	same as above
102	10	Zimmer started work in September	same as above
106	9	"attorneys" should be "attachments"	typo in transcription
108	24	Zimmer started work in September	same as above
110	3-5	Zimmer started work in September	same as above
111	6	The percentage I estimated was based on looking back in hindsight, not what I thought at the time the project was actually going on. I corrected this later during my testimony at the deposition. Although I'm not a mechanical expert, I would say in hindsight that McDaniel had probably completed that percentage of its work by 8/31/04.	
111	24	Zimmer started work in September	same as above
150	20-22	the "letter of intent to dismiss" was a letter under the bond stating that IRSD was considering declaring a default	I re-read the letter
151	15	the 9/8/04 letter was a letter under the bond stating that IRSD was considering declaring a default	I re-read the letter

153 14-21 what I am describing in these lines is the contract
procedure for assigning work to another contractor.
The termination procedure did not require a notice of
intent, although the bond required a notice that IRSD
was considering declaring a default

I re-read the
documents

156 7-8 the 9/8/04 letter was a letter under the bond
stating that IRSD was considering declaring a default

clarification

171 23-24 Tri State was paid about \$635,000

I checked the records

172 4-6 The total paid to Zimmer was about \$958,000

I checked the records

Dated: April 19, 2007

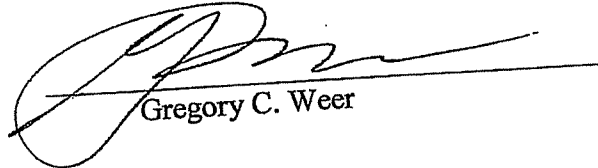

Gregory C. Weer

EXHIBIT 7

DB 00163615

000000 AUG 31 '04



Your Total Project Solution

27 August 2004

Mr. William McDaniel
McDaniel Plumbing & Heating, Inc.
205D Old Churchmans Road
New Castle, De 19720

Re: Sussex Central High School

EDiS Company

110 South Poplar Street
Suite 400
P.O. Box 2697
Wilmington, DE 19805-0697

Tel. (302) 421-5700
Fax. (302) 421-5715

www.EDiSCompany.com

SCANNED AUG 31 '04

Dear Mr. McDaniel:

References:

- a. AIA Document A201/CMA, General Conditions of the Contract for Construction.
- b. Section 00900 Supplementary Conditions of the Contract for Construction.
- c. EDiS Company Letter to McDaniel Plumbing and Heating Inc., Subject: Seven Day Notification, dated 20 August 2004.

On 20 Aug 04 you were notified, via reference c, that you needed to complete specific activities in penthouses A301, C301, D301, E301, F301, & F302. As of 27 Aug 04 you have failed to complete the following items listed in reference c:

- Air handling units in penthouses A301, C301, D301, E301, F301, & F302 will be operational and under automatic temperature control.
- The remaining fresh air ductwork for the AHU in penthouse C301.
- The remaining fresh air ductwork for the AHU's in penthouses A301, D301, E301, F301, & F302.

Therefore in accordance with article 2.4.1 of reference a and paragraph 2.4 of reference b, the owner will be supplementing your work force to complete the work in penthouses A301, C301, D301, E301, F301, & F302. You are not to perform any more work in these penthouses. The cost to complete the work in the penthouses will be tracked on a time and material basis and deleted from the balance of your contract.

This is not a termination of your contract. You are required to diligently pursue the completion of work in other areas of the building and pump house.

Sincerely,

Christian J. McCone
Project Manager

cc:

IRSD, Mr. Greg Weer

EDiS, Mr. Theodore Dwyer

EDiS, Mr. Ernie Luoto

Mr. Don Logan, Esq.

RLI Insurance Company ✓

File

EXHIBIT 8

Chapter 426 Chapter 427

Vol. 73 Vol. 73

CHAPTER 427

FORMERLY

SENATE BILL NO. 386

AN ACT TO AMEND CHAPTER 69 OF TITLE 29 OF THE DELAWARE CODE RELATED TO STATE PROCUREMENT TO AUTHORIZE THE PROCUREMENT OF PROFESSIONAL SERVICES BY COOPERATIVE AGREEMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE :

Section 1. Amend Chapter 69 of Title 29 of the Delaware Code by adding a new Section 6987 to read as follows:

"§6987. Cooperative Procurement.

An agency may participate in, sponsor, conduct or administer a cooperative agreement for the procurement of professional services with one or more public procurement units either within this State, with another State, or with a consortium of other states in accordance with an agreement entered into between the participants. Such agreement may include material and/or non-professional services with professional services. The other provisions of this subchapter shall not apply when an agency participates in an existing cooperative agreement for the procurement of professional services with a contractor holding a current contract as part of such cooperative agreement."

Approved July 30, 2002

CHAPTER 428

FORMERLY

SENATE BILL NO. 416
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO BID AND PERFORMANCE BONDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Section 6927(a), Title 29 of the Delaware Code by deleting paragraph (1) in its entirety and inserting the following in lieu thereof:

"(1) A deposit of either a good and sufficient bond to the State for the benefit of the agency involved; such bonds shall be issued with a corporate surety authorized to do business in this State, the surety shall be approved by the agency, and the bond form used shall be the standard form included as part of the bid documents issued by the Department of Administrative Services for this purpose; or"

Section 2. Amend Section 6927(d), Title 29 of the Delaware Code by deleting subsection (d) in its entirety and inserting the following in lieu hereof:

"(d) Performance Bonds. - Simultaneous with the execution of the formal contract where required by 6923(k)(1) and 6924(j)(1) of this title, the procuring agency may require the successful bidder to execute a good and sufficient bond to the State for the benefit of the agency. Such performance bonds shall:

- (1) Be with a corporate surety authorized to do business in this State;
- (2) Be in a sum equal to 100% of the contract award, except as otherwise provided in this subsection; and

Chapter 428
Vol.73Chapter 430
Vol.73

(3) The bond form used shall be the standard form issued by the Department of Administrative Services for this purpose and shall be included in the projects' bid documents.

Contracts for the purchase of material with a value less than the threshold amount(s) established by the Contracting and Purchasing Advisory Council may reduce or waive this bond requirement from the successful bidder. Such reduction or waiver shall be stated in the bid specifications."

Section 3. Amend Section 6962(d)(8), Title 29 of the Delaware Code by inserting the following phrase after the phrase "the form of the bond and surety to be approved by the agency" and before the phrase "or a security of the bidders assigned to the agency": "and the bond form used shall be the standard form issued by the Department of Administrative Services for this purpose."

Section 4. Amend §6962(d)(9)(a) by adding the following phrase after the words "100 percent of the contract price": "and the bond form used shall be the standard form issued by the Department of Administrative Services."

Section 5. This Act shall become effective on October 1, 2002.

Approved July 30, 2002

CHAPTER 429

FORMERLY

SENATE BILL NO. 272

AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 AND TITLE 29 RELATING TO LEAVE OF ABSENCE FOR MILITARY SERVICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE :

Section 1. Amend Section 1327, Chapter 13, Title 14 of the Delaware Code by deleting subsection (b) in its entirety, and substituting in lieu thereof the following:

"(b) During said leave of absence resulting from Operation Desert Shield/Storm, Operation Noble Eagle, or Operation Enduring Freedom, such principal, teacher or other employee at a school district shall continue to receive his/her State compensation during the initial period of active duty prescribed by the military to be reduced by any military compensation received. The Department of Education shall adopt rules and regulations necessary to implement the provisions of this paragraph that are consistent with those adopted by the Office of State Personnel pursuant to §5105(b) of Title 29. These rules shall make it the responsibility of the employee to initiate the claim and supply the required military pay information. The State shall be responsible for collecting information relating to State compensation. Claims shall be filed within 90 days of release from active duty or passage of this legislation, whichever is later."

Section 2. Amend Section 5105, Chapter 51, Title 29 of the Delaware Code by deleting subsection (b) in its entirety, and substituting in lieu thereof the following:

"(b) During said leave of absence resulting from Operation Desert Shield/Storm, Operation Noble Eagle, or Operation Enduring Freedom, such employee shall continue to receive his/her State compensation during the initial period of active duty prescribed by the military to be reduced by any military compensation received. The Office of State Personnel shall develop any rules and regulations necessary to implement the provisions of this paragraph. These rules shall make it the responsibility of the employee to initiate the claim and supply the required military pay information. The State shall be responsible for collecting information relating to State compensation. Claims shall be filed within 90 days of release from active duty or passage of this legislation, whichever is later."

Section 3. This act shall be effective retroactively to September 11, 2001.

Approved August 12, 2002

AN ACT TO AMEND FOR RETIRED S.

BE IT ENACTED

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Section 2. Ar
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"(3)

Trustees."

Approved August 1

AN ACT TO AMEND T ORDER TO IMPLI AND MORTALITY

BE IT ENACTED I members elected to

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Section 2. Am
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"Such procedu
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EXHIBIT 9

Aug-12-2005 11:57am From-SUPERINTENDANT

T-404 P.002/007 F-504



STATE OF DELAWARE
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES MANAGEMENT
149 TRANSPORTATION CIRCLE
DOVER, DELAWARE 19901

OCT - 3 2002

September 27, 2002

Ms. Lois M. Hobbs
Indian River School District
31 Hoosier Street
Route 2 Box 156
Selbyville, DE 19975

SUBJECT: NEW BOND FORMS FOR PUBLIC WORKS CONTRACTS

Dear Ms. Hobbs:

Senate Bill 416, which was passed by the General Assembly and signed by Governor Ruth Ann Minner, outlines changes in Title 29, Chapter 69 of the Delaware Code. The bill requires that all bid and performance bonds used on public works contracts shall be a standard form issued by the Department of Administrative Services. The standard bid, performance and payments bonds are attached. If you wish to receive an electronic version, please contact us at (302) 739-5644, provide an e-mail address and it will be e-mailed to you. The Department of Transportation has a performance/payment bond form that is acceptable for use on highway projects.

These bond forms are mandatory for all public works bid documents after October 1, 2002, and must appear in all project manuals. No substitutions will be accepted.

Should you have any questions, please contact us at (302) 739-5644.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. DeVore".

Mark A. DeVore, P.E.
Chief of Engineering and Operations

MAD/nac E:\DFM\techsvcs\sb416-bonds.doc

Attachments

cc: Gloria Wernicki Homer, Secretary
Robert J. Furman, Director
Louis A. McCloskey, Deputy Director
William R. Davis, Facilities Program Administrator
Technical Services Section



Aug-12-2005 11:57am From-SUPERINTENDANT

T-404 P.003/007 F-504

BID BOND

TO ACCOMPANY PROPOSAL
(Not necessary if security is used)

KNOW ALL MEN BY THESE PRESENTS That: _____
 _____ of _____ in the County of _____
 _____ and State of _____ as Principal, and _____
 _____ of _____ in the County of _____
 and State of _____ as Surety, legally authorized to do business in the State of Delaware
 ("State"), are held and firmly unto the State in the sum of _____
 Dollars (\$ _____), or _____ percent not to exceed _____
 Dollars (\$ _____)
 of amount of bid on Contract No. _____, to be paid to the State for the use and
 benefit of (insert State agency name) for which payment well and truly to be made, we do bind ourselves, our
 and each of our heirs, executors, administrators, and successors, jointly and severally for and in the whole
 firmly by these presents.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH That if the above bounden Principal
 who has submitted to the (insert State agency name) a certain proposal to enter into this contract for the
 furnishing of certain material and/or services within the State, shall be awarded this Contract, and if said
 Principal shall well and truly enter into and execute this Contract as may be required by the terms of this
 Contract and approved by the (insert State agency name) this Contract to be entered into within twenty days
 after the date of official notice of the award thereof in accordance with the terms of said proposal, then this
 obligation shall be void or else to be and remain in full force and virtue.

Sealed with _____ seal and dated this _____ day of _____ in the year of our Lord two
 thousand and _____ (20____).

SEALED, AND DELIVERED IN THE
 Presence of

 Name of Bidder (Organization)

Corporate
 Seal

By:

 Authorized Signature

Attest _____

 Title

 Name of Surety

Witness: _____

By:

 Title

Aug-12-2005 11:58am From-SUPERINTENDANT

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T-404 P.004/007 F-504

FORM OF PERFORMANCE BOND

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____, as principal ("Principal"), and _____, a _____ corporation, legally authorized to do business in the State of Delaware, as surety ("Surety"), are held and firmly bound unto the State of Delaware, Department of Administrative Services, Division of Facilities Management ("Owner"), in the amount of _____ (\$ _____), to be paid to Owner, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, who has been awarded by Owner that certain contract known as Contract No. _____ dated the _____ day of _____, 20__ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly provide and furnish all materials, appliances and tools and perform all the work required under and pursuant to the terms and conditions of the Contract and the Contract Documents (as defined in the Contract) or any changes or modifications thereto made as therein provided, shall make good and reimburse Owner sufficient funds to pay the costs of completing the Contract that Owner may sustain by reason of any failure or default on the part of Principal, and shall also indemnify and save harmless Owner from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees, if requested to do so by Owner, to fully perform and complete the work to be performed under the Contract pursuant to the terms, conditions and covenants thereof, if for any cause Principal fails or neglects to so fully perform and complete such work.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and Surety hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to Surety as though done or omitted to be done by or in relation to Principal.

Aug-12-2005 11:58am From-SUPERINTENDANT

T-404 P.005/007 F-504

Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of Surety and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to Surety or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

Name: _____

Witness or Attest: Address: _____

Name:

(Corporate Seal)

By: _____ (SEAL)
Name:
Title:

SURETY

Name: _____

Witness or Attest: Address: _____

Name:

(Corporate Seal)

By: _____ (SEAL)
Name:
Title:

Aug-12-2005 11:58am From-SUPERINTENDANT

T-404 P.006/007 F-504

FORM OF PAYMENT BOND

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____, as principal ("Principal"), and _____, a _____ corporation, legally authorized to do business in the State of Delaware, as surety ("Surety"), are held and firmly bound unto the State of Delaware, Department of Administrative Services, Division of Facilities Management ("Owner"), in the amount of _____ (\$ _____), to be paid to Owner, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, who has been awarded by Owner that certain contract known as Contract No. _____ dated the _____ day of _____, 20__ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly pay all and every person furnishing materials or performing labor or service in and about the performance of the work under the Contract, all and every sums of money due him, her, them or any of them, for all such materials, labor and service for which Principal is liable, shall make good and reimburse Owner sufficient funds to pay such costs in the completion of the Contract as Owner may sustain by reason of any failure or default on the part of Principal, and shall also indemnify and save harmless Owner from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and Surety hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to Surety as though done or omitted to be done by or in relation to Principal.

Surety hereby stipulates and agrees that no modifications, omission or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of Surety and its bond.

Aug-12-2005 11:58am From-SUPERINTENDANT

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T-404 P.007/007 F-504

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to Surety or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

Name: _____

Witness or Attest: Address: _____

Name: _____

(Corporate Seal)

By: _____(SEAL)
Name:
Title:

SURETY

Name: _____

Witness or Attest: Address: _____

Name: _____

(Corporate Seal)

By: _____(SEAL)
Name:
Title: